

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

ORDER.

JASA RAM

V. THE RAJASTHAN PUBLIC
SERVICE COMMISSION,
AJMER.

S.B.CIVIL WRIT PETITION 3006/2004,
under Article 226 of the Constitution
of India.

DATE OF ORDER: 5.8.05

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Nitin Trivedi for Mr.S.N.Trivedi,
for Petitioner.
Mr.J.P.Joshi, for R.P.S.C. - Respondent.

BY THE COURT:

REPORTABLE

By the instant petition, the petitioner has prayed that a writ, order or direction in the appropriate nature may be issued in his favour and the respondent – the Rajasthan Public Service Commission (hereinafter referred to as 'the RPSC') may be directed to change/correct the category of the petitioner from General to OBC category and, accordingly, his result may be declared and, on found suitable, he may be allowed to appear in the Main Examination, 2003, with all consequential benefits.

Brief facts, giving rise to the instant petition are that the petitioner belongs to Other Backward Caste (OBC) as is evident from the Certificate dated 3rd December, 1999 (Annexure 1)

issued by the Tehsildar, Desuri, District – Pali (Rajasthan). On April 6, 2003, the RPSC published an advertisement No.1, by which applications were invited for the purpose of direct recruitment to the post of Rajasthan Administrative and Subordinate Services by way of Combined Competitive Examination, 2003. In the aforesaid advertisement, eligibility, criteria and procedure has been laid down and the last date for submitting the application form was June 7, 2003. Since the petitioner was possessing requisite qualifications, he applied for the Combined Competitive Examination, 2003, in the prescribed and proper proforma, within stipulated time – period. An admission card for RAS/RTS (Preliminary) Examination, bearing Roll No.328085 (Annexure 2) was issued to the petitioner. The petitioner appeared in the Examination held on October 12, 2003 and the result was declared on December 7, 2003, in which, after scaling, the petitioner obtained 276 marks.

It is further averred by the petitioner in the instant petition that a press note dated December 16, 2003 (Annexure 3) was issued by the RPSC, in which the details of total number of posts, number of success candidates and their cut off marks categorywise were given. According to that press note (Annexure 3), for a male candidate in OBC category, last cut off marks were shown as 273, for the purpose of allowing the candidate to appear in the Main Examination.

It is also averred by the petitioner in the instant petition

that as per a Note appended to Admission Card (Annexure 2), if category has been wrongly filled up by a candidate in the application form, then the candidate must inform the RPSC with regard to change/correct the category within a period of ten days from the date of the Examination. Therefore, the petitioner vide letter dated 13th October, 2003, sent through ordinary post, informed the RPSC about the change of category from General to O.B.C., which, according to the petitioner, was wrongly filled up by him, while filling up the Examination Form.

The Result of the Examination was declared on December 7, 2003. As per the petitioner, he sent a Registered letter on January 12, 2003 (Annexure 5), enclosing therewith a copy of the earlier letter as well as the Caste Certificate. The letter was received by the RPSC on the next date, i.e., January 13, 2004. Thereafter, the petitioner sent reminders by Registered letters dated March 10, 2004 and June 21, 2004 (Annexures 6 and 7) respectively, but no response was given by the RPSC. Therefore, being aggrieved by the no-response of the RPSC, the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that some girls candidates, bearing Roll No.42356 of Sarita Buria, Roll No.443024 of Rashmi, Roll No.457550 of Sudha Deval and Roll No.521126 of Rukmani Meena, who wrongly filled up the category, but after declaration of the result, they moved the applications for changing their category. Their applications

were accepted by the RPSC and their categories were changed vide letter dated April 9, 2004, but, in the case of the petitioner, no heed was paid by the RPSC and, according to the learned counsel, a hostile discrimination between the petitioner and the similarly situated candidates has been made, though the petitioner has moved the application for change of his category vide letter dated October 13, 2003 within the stipulated time period as per terms and conditions of the RPSC, but his category from General to O.B.C. was not changed.

It is also submitted by the learned counsel for the petitioner that there are certain candidates, whose category has been changed by giving liberal construction to the terms and conditions and by giving them relaxation. The petitioner has given names of the candidates viz. Sarita Buria, Rashmi, Sudha Deval and Rukmani, who applied for changing their gender, which was inadvertently filled by them while filling up the Examination Form; they were permitted by the RPSC, even after the stipulated period of ten days, whereas, in the case of the petitioner, a hostile discrimination has been made by the RPSC, by not permitting him to change his category, though his case is similarly situated to that of the four aforesaid candidates, whose gender has been allowed to be changed by the Commission. According to the learned counsel, the change of gender means – the change of category.

In support of his contentions, learned counsel for the

petitioner has referred to the case of Mrs. Urmila Meena v. State of Rajasthan & Others (S.B. Civil Writ Petition No. 8054/2004 and 3 other petitions) decided by the Jaipur Bench, on May 30, 2005, in which the petitioner had submitted their applications for appearing in the Rajasthan State and Subordinate Service Competitive Examination held in October, 2003. They passed the preliminary examination, but were not allowed by the RPSC to appear in the Main Examination on the ground that they had not correctly filled the optional subjects in their application forms. By the interim of the order, the petitioner were allowed to inform the R.P.S.C. the optional subjects, they intended to appear in the Main Examination. Then, in such a situation, this Court held that since there is a provision for change of optional subjects, after declaration of the result of the Main Examinations, therefore, the Commission should take a sympathetic harmonious construction in larger interest of the candidates. The question was only allowing the candidates to appear in the Main Examination, so this technical objection of the Commission was removed by the Court. But, here, in the instant case, the petitioner claims to have sent the letter dated 13th October, 2003 to the Commission by ordinary post. Thereafter, he is said to have sent the Registered letters on March 10, 2004 along with the O.B.C. Certificate. The letter of the petitioner was not received by the Commission. The Postal Agency is not the Agency of the Commission, so, if the letter sent by the petitioner does not

reach the Commission within time-period, the RPSC is not responsible for it.

It is submitted by the learned counsel for the RPSC – Respondent that the admission card was issued to the petitioner, in which the category of the petitioner was mentioned as General. It was clearly mentioned in the admission card that the request for change of category should be made within ten days of the preliminary examination. Thus, the petitioner was required to make request for change of category within ten days of the examination. The examination was held on October 12, 2003. No request was received by the respondent – Commission from the petitioner for change of category on or before October 22, 2003.

It is further submitted by the learned counsel for the respondent that the petitioner appeared in the Competitive Examination held on October 12, 2003, result of which was declared on December 7, 2003 and the petitioner was not able to qualify for the Main Examination.

It is also submitted by the learned counsel for the respondent that the petitioner never made any request for change of category on or before October 22, 2003. Since the respondent- Commission did not receive any request on or before October 22, 2004, the request for change of category could not have been entertained by the Commission. Apart from that when the request for change of category was not received in the Office of the Commission on or before 22nd October, 2003, the question

of entertaining any reminder sent by the petitioner does not arise.

It is contended by the learned counsel for the respondent that the petitioner has not placed on record any proof of dispatch with regard to the original request dated 13th October, 2003, alleged to have been sent by him in the Office of the Commission, rather the petitioner was smart enough to submit the proof of dispatch with regard to the reminder dated 12th January, 2004 and 10th March, 2004, respectively.

It is further contended by the learned counsel for the respondent that no request for change of category was received in the Office of the Commission on or before 22nd October, 2003 and the petitioner has miserably failed to substantiate his allegation that such a request was sent by him to the Office of the Commission. Thus, in such circumstances, the petitioner cannot claim any benefit on the basis of the proof of reminders sent by him after October 22, 2003.

It is also contended by the learned counsel for the respondent that the petitioner cannot claim any parity with regard to the female candidates in whose cases, the gender was not correctly mentioned in their application forms. In some cases, the women candidates failed to mention their gender correctly, but from the record, it was evident that they belong to the female category. It is only in such cases that the Commission made correction with regard to the gender and declared the

result. The present petitioner, who did not make a request on or before 22nd October, 2003, for change of his category, is not entitled to claim change in category, after the declaration of the result.

It is vehemently argued by the learned counsel for the respondent that the petitioner, for the reasons best known to him only, has not placed on record the acknowledgement of the letter dated October 13, 2003. Thus, the petitioner has deliberately made mis-statement of fact and has not come to the Court with clean hands. As a matter of fact, no request for change of category was received from the petitioner in the Office of the Commission on or before 22nd October, 2003. The petitioner, in these circumstances, is not entitled to claim change of category from General to O.B.C.

It is strenuously argued by the learned counsel for the respondents that the petitioner has taken a chance of applying in General Category, presumably for the reason that on the last occasion, the cut off marks of the General Category were lower than the cut off marks of O.B.C. Category. So, having realised that in this Examination, the cut off marks of the O.B.C. Category is lower than the General Category, the petitioner has quite smartly tried to take the advantage of this fact to change his category after declaration of the result. Apart from that, the petitioner has failed to place on record the acknowledgement of the letter dated 13th October, 2003.

In support of his contentions, the learned counsel for the respondent has referred to the case of a Division Bench of this Court given in *Mrs.Savitri Batar v. Rajasthan Public Service Commission, Ajmer* (D.B.Civil Writ Petition No.3046/88) decided on September 13, 1988, in which the last date for receipt of application for recruitment to the posts of Legal Assistants was July 30, 1988. The petitioner sent his application form by Registered Post on July 23, 1988, but it was received in the Office of the R.P.S.C. On August 1, 1988 and, as such, the application form was rejected. On being filed petition before this Court, it was held that the R.P.S.C. is not responsible for any fault of postal authorities and the Commission has rightly rejected the application on the ground of late receipt.

Similarly, learned counsel for the respondents has also referred to the case of *Ashok Pareek v. Rajasthan Public Service Commission and Another* (S.B.Civil Writ Petition No.2931/89), decided on November 21, 1989, in which the petitioner sent his application form for the post of Assistant Architect to the Rajasthan Public Service Commission at Ajmer by Registered Post on May 12, 1989, through Post Office, at Jaipur. The last date for receipt of application form by the R.P.S.C. was May 19, 1989. The Registered letter, containing application form of the petitioner, was delivered to the R.P.S.C. on May 27, 1989, i.e., after the last date. Thus, the Postal Department, Jaipur took a period of about fortnight in delivering the letter to the R.P.S.C ,

Ajmer. On being filed a writ petition, it was held by this Court that the R.P.S.C. Cannot be compelled to accept the time barred application. The law is very well settled that when a person is required to do a certain thing within a certain time and he utilised the services of another agency to do that thing for him, the agency employed by him is his agent. The Post Office was an agent of the petitioner. The RPSC had nowhere specified that the application should be sent only by Registered Post and not otherwise. Unless that express direction had been given by the R.P.S.C., the RPSC cannot be said to have employed the Post Office as its agent for sending the application.

Heard learned counsel for the parties.

It is admitted position that the petitioner has not placed on record any proof/acknowledgement with regard to the original application dated 13th October, 2003, said to have been sent by him by ordinary post for change of his category from General to the O.B.C. This clearly reflects the conduct and craft of the petitioner that he has concealed the real fact before the Court and is staking his claim on the basis of the subsequent letters. The Public Institutions, like R.P.S.C. are established under the Statute and they should strictly follow the norms laid down in the Recruitment Rules, so that the faith of the public in general and students in particular is not shaken. If such kind of students are allowed to change the category on a false pretext, then there will be a flood of litigations. The R.P.S.C. has rightly not

entertained the subsequent correspondence of the petitioner. Even, for the sake of argument, if it is taken that the Postal Department has wrongly delayed the delivery of the letter to the R.P.S.C., the petitioner cannot have his remedy against the R.P.S.C. Since no request was received by the respondent – Commission from the petitioner for change of category on or before October 22, 2003, the R.P.S.C. does not owe any duty to accept a time-barred application of the petitioner as well as his subsequent reminders. It is significant to note that the petitioner has not placed on record any proof with regard to the original request dated 13th October, 2003, but he has quite intelligently submitted the proof of reminders dated 12th January, 2004 and 10th March, 2004 respectively. Thus, in these circumstances, it can very well be concluded that Annex.4 – the letter dated 13th October, 2003 which the petitioner claims to have sent to the RPSC for change of category within the stipulated period of ten days from the Preliminary Examination, was never dispatched/sent by the petitioner to the R.P.S.C. and the said letter has been antedated to claim benefit of the provision that the request with regard to the change of category was sent within the stipulated period of ten days. So far as the contention of the learned counsel for the petitioner that the change of gender amounts to change of category, is concerned, it may be mentioned here that some female candidates have not mentioned the gender in their application

forms and some women candidates have failed to mention their gender correctly, but from the record, it was evident that they belong to female category, so, in such circumstances the Commission made correction with regard to the gender. The petitioner, who did not make any request on or before 22nd October, 2003 for change of his category, is not entitled to claim change in the category from General to O.B.C. after the declaration of the result. Presumably, the petitioner has taken chance of applying in General Category for the reason that on the last occasion, the cut off marks of the General Category were lower than the cut off marks of OBC Category. However, by realizing that, in this Examination, the cut off marks of the OBC Category is lower than the General Category, the petitioner has unsuccessfully tried to take the advantage of this fact by planning to change his category after declaration of the result. In this view of the matter, it is admitted position that the petitioner has not come to this Court with clean hands and he has deliberately concealed the material facts before the Court. Thus, keeping in view all the aforesaid facts and circumstances of the case, the petitioner is not entitled to get any relief from this Court.

In the result, I do not find any force in the instant petition. The writ petition is, therefore, dismissed summarily. The stay order dated 29.11.2004 stands vacated.

scd

(R.P.VYAS),J.

